



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 120328229-4949-02]**

**RIN 0648-XE095**

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason General category retention limit adjustment.

**SUMMARY:** NMFS is adjusting the Atlantic bluefin tuna (BFT) General category daily retention limit from the default limit of one large medium or giant BFT to four large medium or giant BFT for the September, October through November, and December subquota time periods of the 2015 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

**DATES:** Effective September 1, 2015, through December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Atlantic Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The currently codified baseline U.S. quota is 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). Among other things, Amendment 7 revised the allocations to all quota categories, effective January 1, 2015. See § 635.27(a). The currently codified General category quota is 403 mt. Each of the General category time periods ("January," June through August, September, October through November, and December) is allocated a portion of the annual General category quota. The codified baseline General category subquotas include 106.8 mt for September, 52.4 mt for October through November, and 21 mt for December. NMFS transferred 21 mt of BFT quota from the December 2015 subquota to the January 2015 subquota period (79 FR 77943, December 29, 2014).

Unless changed, the General category daily retention limit starting on September 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default retention limit would apply to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT.

For the 2014 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: two large medium or giant BFT for January (78 FR 77362, December 23, 2013), four large medium or giant BFT for June through August (79 FR 30745, May 29, 2014), and four large medium or giant BFT for September through December (79 FR 50854, August 26, 2014). NMFS adjusted the daily retention limit for the 2015 January subquota period from the default level of one large medium or giant BFT to three large medium or giant BFT in the same action as the 21-mt transfer from the December 2015 subquota period to the January 2015 subquota period described above (79 FR 77943, December 29, 2014). For the June through August 2015 subquota period, NMFS adjusted the daily retention limit to four large medium or giant BFT (80 FR 27863, May 15, 2015).

### **Adjustment of General Category Daily Retention Limit**

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), which are: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT

before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds; optimizing fishing opportunity; accounting for dead discards, facilitating quota monitoring, supporting other fishing monitoring programs through quota allocations and/or generation of revenue; and support of research through quota allocations and/or generation of revenue.

NMFS has considered these criteria and their applicability to the General category BFT retention limit for September through December 2015. These include, but are not limited to, the following considerations: Biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Continued BFT landings would support the collection of a broad range of data for these studies and for stock monitoring purposes.

As this action would be taken consistent with the quotas previously established and analyzed in Amendment 7 (79 FR 71510, December 2, 2014), and consistent with objectives of the 2006 Consolidated HMS FMP, it is not expected to negatively impact stock health. A principal consideration is the objective of providing opportunities to harvest the full 2015 General category quota without exceeding it based upon the 2006 Consolidated HMS FMP goal: “Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing

optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.” It is also important that NMFS constrain landings to BFT subquotas both to adhere to the FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the projections of stock rebuilding.

NMFS also considered the fact that it has prepared a final quota rule that would implement and give domestic effect to the 2014 ICCAT recommendation on western Atlantic BFT management, which increased the U.S. BFT quota for 2015 and 2016 by 14 percent from the 2014 level (proposed rule: 80 FR 33467, June 12, 2015; final rule expected to file with the Office of the Federal Register in late August and be effective in late September 2015). The domestic subquotas in that action would result from application of the allocation process established in Amendment 7 to the increased U.S. quota, and would include an increase in the General category quota from the currently codified 403 mt to 466.7 mt. As explained below, however, the retention limits being set in this action are not dependent on those quota increases.

Commercial-sized BFT migrated to the fishing grounds off New England by early June and are actively being landed. As of August 14, 2015, 141.5 mt of the 2015 General category quota of 403 mt have been landed, and landings rates remain at approximately 1 mt per day. Given the rollover of unused quota from one time period to the next, current catch rates, and the fact that the daily retention limit will automatically revert to one large medium or giant BFT per vessel per day on September 1, 2015, absent agency action, NMFS anticipates the full 2015 General category quota may not be harvested. In September through December 2014, under a

four-fish limit, BFT landings were approximately 268.4 mt. For the entire 2014 fishing year, 94.6 percent of the available General category quota was filled.

A limit lower than four fish could result in unused quota being added to the later portion of the General category season (i.e., rolling forward to the subsequent subquota time period). Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one subquota time period to the next. However, increasing the daily limit to five fish may risk exceeding the available General category quota. Increasing the daily retention limit to four fish will increase the likelihood that the General category BFT landings will approach, but not exceed, the annual quota, as well as increase the opportunity for catching BFT harvest during September through December. Increasing (and sometimes maximizing) opportunity within each subquota period is also important because of the migratory nature and seasonal distribution of BFT. In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for BFT may be constrained by the short amount of time the BFT are present.

Based on these considerations, NMFS has determined that a four-fish General category retention limit is warranted. It would provide a reasonable opportunity to harvest the U.S. BFT quota, without exceeding it, while maintaining an equitable distribution of fishing opportunities; help achieve optimum yield in the BFT fishery; allow the collection of a broad range of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP, as amended. Therefore, NMFS increases the General category retention limit from the default limit (one) to four large medium or giant BFT per vessel per day/trip, effective September 1, 2015, through December 31, 2015.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example (and specific to the September through December 2015 limit), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of four fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeting fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

### **Monitoring and Reporting**

NMFS will continue to monitor the BFT fishery closely through the landings and catch reports. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. General, HMS Charter/Headboat, Harpoon, and Angling category vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov*. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustment or closure is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

### **Classification**

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons.

The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on available BFT quotas, fishery performance in recent years, the availability of BFT on the fishing grounds, among other considerations, adjustment to the General category BFT daily retention limit from the default level is warranted. Analysis of available data shows that adjustment to the BFT daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov*.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP, as amended. Adjustment of the retention limit needs to be effective September 1, 2015, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted



sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 24, 2015.

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[FR Doc. 2015-21251 Filed: 8/24/2015 04:15 pm; Publication Date: 8/27/2015]